IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 639 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHAVAS RAJPUT SURESH BHUPATBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BS SUPEHIA for Appellant No. 1
MR ATUL H MEHTA for Petitioner No. 1
MR KP RAWAL, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 04/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant was accused no.1 in Sessions Case No.21 of 1993 before the Additional Sessions Judge, Surendranagar who, by his judgment and order dated 9th May, 1994, convicted him of the offences under Section 302 of I.P.C. and Section 135 of Bombay Police Act and sentenced him to life term for the offence under Section 302 and to a term for four months for the offence under Section 135 of Bombay Police Act. Both the sentences were ordered to run concurrently. The learned Judge acquitted the brother of the appellant Ramesh Bhupatbhai who was charged alongwith the appellant for the offence under Section 302 read with Section 34 of the I.P.C.

2. The charge against the appellant and his brother was that they suspected the victim Atul Govindbhai of having an affair with their mother Ranjanben and in furtherance of their common intention to kill him, the accused no.2 - the brother of the appellant held the victim and the appellant inflicted knife blows on the chest and other parts of the victim's body and killed him. The incident was alleged to have occurred on 29th October, 1992 opposite the old bus stand in Dhrangadhra. Thus, they were charged with the offence under Section 302 read with Section 34 of the I.P.C.

3. The prosecution story is to be found in the evidence of P.W.1 Champaben (Exh.24), the grandmother of victim Atul. According to her evidence, she had two daughters but no son. The eldest daughter was Mangalaben who was married and they were living in Dhrangadhra. her husband Govindbhai had already died. She had four sons. Atul was her fourth son. He died of injuries received in the incident which occurred at 9 o'clock in the night. When the incident occurred, she was at her home. On hearing a hubbub, she ran out of her house and she heard cries "I am being killed, run run". They were the cries of Atul. She ran to the house of appellant Suresh. When she arrived there, Suresh inflicted knife blows on the middle of the chest and back of Atul's body. He was bleeding profusely and had fallen down. Then she went to the police station. She told the police that her grandson had been killed by Suresh. The police came to the scene of the incident. Atul's mother also came there. Then she said that her daughter had followed her to the police station. Her complaint (Exh.25) was taken down by the police and she had put her thumb impression on the complaint. The accused were the grandsons of her husband's elder brother. In cross-examination, she said

that she was aged about 75 years and her daughter must be aged about 55 years. It was elicited in her cross-examination on behalf of the appellant that she had not stated in her complaint that she had heard the cries of Atul. However, she denied the suggestion that she had arrived after the incident was over. In cross-examination on behalf of the accused no.2, it was elicited that previously, Atul and Ranjanben had been working together in a parotha house and that about 5 years ago they had run away for about 3 years. She also admitted that since they were related to each other, no complaint had been lodged.

4. The second eye-witness was P.W.2 Mangalaben Shamjibhai (Exh.26). According to her, when previously her son Atul was working in Gohil Parotha House, Suresh had gone there in a rickshaw and given a knife blow. But since they were related to each other, no complaint had been filed. Again, when Atul was sitting at the temple, Suresh had beaten him and, hence, she had sent Atul to her daughter Ilaben's place. However, he had come to Dhrangadhra to celebrate Diwali. The incident occurred about 9 o'clock at night. Since her father was ill, she and her two daughters regularly used to go there to inquire after him. Atul had gone out to answer the call of nature and while he was passing near the house of the appellant, the accused and their father had picked a quarrel with Atul, which she had seen. Atul was held by Ramesh and his father Bhupat and Suresh had given knife blows. She and her two daughters rushed there. Atul was lying on the ground. He was bleeding profusely. Her mother too had come there. She had heard about the affair between Atul and mother of the accused Ranjanben but she did not lend credence to the rumour because Atul was aged about 30 years while Ranjan was aged about 45-50 years. In cross-examination, she said that she had named Ranjanben and Bhupat also as the assailants, besides the two accused.

5. According to the prosecution, P.W.3 Gauriben Gandabhai (Exh.27) and P.W.4 Tidiben Samabhai (Exh.28) were also eye-witnesses but they did not support the prosecution and were declared hostile.

6. The evidence of P.W.5 Dr. Pragyaben Kothari (Exh.30), who conducted the post-mortem, shows that there were following external injuries on the body of the deceased:

(1) 21/2 cm x 1/2 cm x lung deep over 1st Rt intercostal space away from Aerraum Eliptical

acute end medially

(2) 11/2 cm x 1/2 cm x lung deep (3 inch) intercostal space 11/2 inch away from eliptical, Acute end laterally

(3) 2 cm x 1/2 cm x 11/2 inch deep over back at 2 cm away from middle on Rt side eliptical Acute end laterally

(4) 1 cm x 1/2 cm x 11/2 inch deep obliquely on lt side of back 2 cm away from middle, eliptical Acute end medially

(5) 11/2 cm x 1/2 cm over lateral border of lt 4th intercostal space, through & through deep to No. 6 wound (when Probe inserted, it came out from No.6 wound) eliptical, Acute end laterally

(6) 1 cm x 1/4 cm in size over lt. side of chest 2 cm in front of No.5 wound.

She also noted the following internal injuries:

(1) Intercostal muscles of 2nd both side intercostal space teared below wound, both pleural cavity full of Blood (about 50 cc)

(2) cut wound over apical lobe - 1/2 cm x 2 mm x 1/4 cm deep

(3) cut wound 1/4 cm x 2 mm x 1/4 cm over apical lobe, collapsed lung

(4) both combers contain small amount of blood

According to her, death was because of shock due to excessive haemorrhage and injuries on the vital part lung. She said the injuries were sufficient to cause death in the ordinary course of nature and that they could have been caused by the muddamal knife shown to her. The medical evidence leaves no doubt that death was homicidal.

7. According to the prosecution, the blood-stained knife was discovered from a babul tree near the railway track at the instance of the appellant. It is true that the panchas have not supported the evidence of discovery but P.W.15 Investigating Officer Jagannath Sitaram More has deposed to the same and there is no reason to disbelieve him. The report of the Forensic Science Laboratory shows that the knife was found to have been stained with blood of the same group as that found on the clothes of the deceased.

8. The defence of the appellant was one of denial.

9. The learned counsel for the appellant submitted that Champaben had not stated in her complaint that she

had heard the cries of Atul and that makes her presence doubtful. However, Champaben was a very old and illiterate lady and a mere omission in the complaint, in the circumstances of the case, does not mean that she had not seen the incident. It was also submitted that Mangalaben had falsely implicated the parents of the accused besides the accused. However, that is no ground for disbelieving her evidence with respect to the main incident implicating the appellant. We find the evidence of these two eye-witnesses natural, reliable and trustworthy. The prosecution's evidence was also corroborated by the discovery of the weapon at the instance of the appellant which was found to have been stained with blood of the same group as that on the clothes of the deceased. In the circumstances, it cannot be said that the learned Additional Sessions Judge committed any error in believing the evidence of the two eye-witnesses. Looking to the number and nature of injuries inflicted by the appellant, there is no doubt that he committed the offence under Section 302 of the I.P.C. There is no substance in the appeal and the same is dismissed.

(M.H. Kadri, J.)

(M.C. Patel, J.)

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